BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

GUILA A. RICKS)	
Claimant)	
VS.)	
)	Docket No. 233,090
CONNECT CARE)	
Respondent)	
AND)	
)	
NEW YORK UNDERWRITERS INS. CO.)	
Insurance Carrier)	

ORDER

Respondent appeals from the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on June 4, 1998.

<u>Issues</u>

Claimant was injured at work on February 24, 1998. In the course of her duties for respondent, claimant was walking down a flight of stairs when she felt a sharp pain in her left knee. Respondent contends claimant's injury did not arise out of her employment because her injury was not the result of any risk associated with her employment, but instead was due to a personal risk, specifically her weight. Respondent further argues that walking down stairs is a normal activity of day-to-day living and, therefore, claimant is precluded from receiving workers compensation benefits by the provisions of K.S.A. 1997 Supp. 44-508(e). Respondent also raises certain nonjurisdictional issues concerning the award of temporary total disability compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For the reasons set forth below, the Appeals Board finds that the Order by the ALJ should be affirmed.

Claimant's job required her to be on her feet much of the day and, further, required claimant to repeatedly walk up and down stairs. Although this activity could be the normal activity of day-to-day living, K.S.A. 1997 Supp. 44-508(e) does not exclude "accidents" that

are the result of such activity, but rather excludes injuries where the "disability" is a result of the natural aging process or the normal activities of day-to-day living. <u>Corbett v.</u> Schwan's Sales Enterprises, Docket No. 216,787 (May 1998).

In this case there was a specific onset caused by an accident at work. There is no allegation in this case that claimant's disability resulted from the wear and tear common to acts of everyday living combined with a preexisting condition, as was the case in Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 738-739, 504 P.2d 625 (1972). Neither is this a case where claimant had a preexisting condition which was worsened or made symptomatic by a solely personal risk as in Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980). Accordingly, the Appeals Board finds the injury that occurred from the act of walking down stairs does constitute an injury that arose out of the employment.

Respondent also raises issues concerning whether claimant proved she is temporarily totally disabled and the amount of compensation due. These are not issues that the Appeals Board has the jurisdiction to consider on an appeal from a preliminary hearing order. K.S.A. 1997 Supp. 44-551(b)(2)(A) and K.S.A. 1997 Supp. 44-534a(a)(2). Findings concerning the nature and extent of disability are not reviewable at this stage of the proceedings.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes dated June 4, 1998, should be, and is hereby, affirmed.

Dated this day of Oatabay 1000

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

c: Andrew E. Busch, Wichita, KS
Richard J. Liby, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director